

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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HSBC BANK USA, N.A., AS TRUSTEE
FOR THE REGISTERED HOLDERS OF
NOMURA HOME EQUITY LOAN, INC.,
ASSET-BACKED CERTIFICATES,
SERIES 2006-HE2,

Case No. 3:19-cv-00265-MMD-CSD

ORDER

Plaintiff,

v.

**FIDELITY NATIONAL TITLE INSURANCE
COMPANY,**

Defendant.

I. SUMMARY

This action involves a title insurance dispute stemming from litigation over a homeowner's association's ("HOA") foreclosure sale. Before the Court is Defendant Fidelity National Title Insurance Company's motion to dismiss the operative First Amended Complaint (ECF No. 47 ("FAC")) (ECF No. 50 ("Motion")).¹ As further explained below, the Court recently issued an order in a very similar case, *Wells Fargo Bank, N.A. v. Fidelity National Title Insurance Company*, ECF No. 52, Case No. 3:19-cv-00241-MMD-CSD (D. Nev. Sept. 20, 2022) ("Wells Fargo"). The reasoning in the Court's recent *Wells Fargo* decision applies in this case as well and resolves a significant portion of the arguments pertinent to the Motion. However, unlike in *Wells Fargo*, Plaintiff also alleges that the California Land Title Association ("CLTA") Form 100.13 endorsement to the pertinent title insurance policy covers its loss. (ECF No. 47 at 29.) Because the Court

¹Plaintiff HSBC Bank USA, N.A., as Trustee For The Registered Holders Of Nomura Home Equity Loan, Inc., Asset-Backed Certificates, Series 2006-HE2 filed a response (ECF No. 55) and Defendant filed a reply (ECF No. 56).

1 finds that CLTA 100(1)(a) covers Plaintiff's loss, but CLTA 100(2)(a) does not, and CLTA
 2 100.13 does not based on the lack of an essential allegation or allegations in the FAC—
 3 and as further explained below—the Court will grant in part, and deny in part, the Motion.
 4 And this order also denies Plaintiff's motion for leave to supplement its opposition to the
 5 Motion. (ECF No. 64.)

6 **II. BACKGROUND**

7 The underlying facts of this case have not significantly changed since the Court
 8 issued a prior order granting Defendant's motion for judgment on the pleadings and
 9 dismissing the original complaint. (ECF No. 35 ("Dismissal Order") at 2-3.) The Court
 10 accordingly incorporates by reference those background facts. (*Id.*)

11 The United States Court of Appeals reversed in part and vacated the Dismissal
 12 Order. (ECF No. 43 ("Memorandum").) The Ninth Circuit found the Court erred in
 13 declining to grant Plaintiff leave to amend the original complaint based on trade usage
 14 evidence Plaintiff wished to present. (*Id.* at 3-4.) The Ninth Circuit held that the extrinsic
 15 evidence—copies of insurance claims manuals and related publications—could support
 16 Plaintiff's claims, noted the Court had said as much in an order granting a motion for an
 17 indicative ruling in a similar case, and thus ordered the Court to give Plaintiff the
 18 opportunity to amend. (*Id.*) The Ninth Circuit also noted that Nevada law permits courts
 19 to consider the custom and practice of the pertinent trade even when construing an
 20 unambiguous contract. (*Id.*)

21 In line with the Memorandum, the Court granted Plaintiff leave to amend upon
 22 remand. (ECF No. 46.) Plaintiff timely filed the FAC. (ECF No. 47.) The FAC contains
 23 claims for: (1) declaratory judgment (*id.* at 28-30); (2) breach of contract (*id.* at 30-31);
 24 (3) breach of the implied covenant of good faith and fair dealing (*id.* at 31-33); (4)
 25 deceptive trade practices (*id.* at 33-34); and (5) unfair claims practices in violation of
 26 NRS § 686A.310 (*id.* at 34-36). The FAC at issue in *Wells Fargo*, ECF No. 52 at 9,
 27 contained the same claims.

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1 Moreover, Plaintiff attached some of the same trade usage evidence to the FAC
2 that Wells Fargo did to the FAC in *Wells Fargo*. Compare *id.* at 4-6 (summarizing the
3 trade usage evidence attached to the FAC in that case) with (ECF Nos. 47-2, 47-3, 47-5,
4 47-7, 47-8, 47-10, 47-11).

5 In addition, Plaintiff in this case asserts that Defendant should have—but did
6 not—cover its loss under the CLTA 100(1)(a) or 100(2)(a) endorsements. (ECF No. 47 at
7 28-29.) The *Wells Fargo* order addresses the same two endorsements. See *Wells*
8 *Fargo*, ECF No. 52 at 11-19. There, the Court found that CLTA 100(1)(a) covered the
9 plaintiff's loss, but CLTA 100(2)(a) did not. See *id.*

10 In addition, the parties' arguments regarding dismissal of the plaintiffs' claims for
11 breach of the implied covenant of good faith and fair dealing, deceptive trade practices,
12 and unfair claims practices in violation of NRS § 686A.310 are also very similar, if not
13 nearly identical, between the two cases, so, as also further explained below, the Court's
14 *Wells Fargo* decision largely controls the analysis of those claims in this case as well.
15 Compare *Wells Fargo*, ECF No. 52 at 21-24 with (ECF Nos. 50 at 17-22, 55 at 22-25).

16 Shifting from a comparison of the two cases entirely back to this one, and as
17 noted, this case differs from *Wells Fargo* because Plaintiff also alleges that CLTA 100.13
18 covers its loss. (ECF No. 47 at 29.) As the Court noted in the Dismissal Order, the
19 version of CLTA 100.13 included in the pertinent policy (American Land Title Association
20 Loan Policy Number G47-Z122542 ("Policy") (ECF No. 47-1 at 2)) does not appear to
21 apply to the facts of this case because "it provides coverage for damages specifically
22 sustained from a specific kind of aircraft easement lien." (ECF No. 35 at 9; see also *id.* at
23 9 n.9 (explaining why this is the case).) That remains true in the copy of the Policy
24 attached to the FAC. (ECF No. 47-1 at 13, 17.) However, the FAC also contains the
25 following pertinent allegations:

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14 186. CLTA 100.13 contains a clerical error in its reference to paragraph 11 and was
15 intended to refer to Paragraph 12 of Schedule B.

187. The CC&Rs are identified as a document in Schedule B, Exception No. 12.

17 188. It was the true understanding and intention of the parties to the Policy for CLTA
18 100.13 to refer to the CC&Rs in Schedule B, Exception No. 12 but for a scrivener's error.

189. The HOA had a priority lien at Date of Policy.

190. The HOA's subsequent sale pursuant to the CC&Rs and NRS 116 resulted in
damages to HSBC Bank.

191. As such, CLTA 100.13 provides coverage.

(ECF No. 47 at 29.) In other words, Plaintiff alleges the reference to paragraph 11 was a mutual mistake, and the version of CLTA 100.13 included in the Policy should have referred to paragraph 12 of Schedule B instead. And as noted in the excerpt included above, Paragraph 12 of Schedule B refers to the Covenants Conditions & Restrictions (“CC&Rs”) of the pertinent HOA. (*Id.*)

Plaintiff attached as exhibits to its FAC some trade usage evidence allegedly relevant to CLTA 100.13. (*Id.* at 5-11 (describing some of those exhibits).) For example, one piece of this evidence purportedly issued by CLTA as an instruction to title insurance agents who were considering selling CLTA 100.13 states that the endorsement, “[p]rovides coverage in the event the insured mortgage lacks priority over assessment liens, provided for in any CC&R’s shown as an exception in Schedule B, which arise prior to acquisition of title by the insured.” (ECF No. 47-6 at 52.) Similarly, a 2008 Stewart Title underwriting guideline states that CLTA 100.13, “[p]rovides the ALTA lender with insurance that the lien of any homeowners association maintenance or upkeep assessments levied under the CC&Rs shown in Schedule B, is and will be, subject and subordinate to the insured deed of trust or mortgage.”² (ECF No. 47-9 at 2.)

²The Policy issued in 2005. (ECF No. 47-1 at 2.) The Court makes no ruling in this order as to whether this 2008 guideline is relevant trade usage evidence because it is not strictly relevant to the analysis that follows farther below, though the Court is somewhat skeptical considering that it postdated the policy by approximately three years.

1 **IV. LEGAL STANDARD**

2 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
 3 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must
 4 provide "a short and plain statement of the claim showing that the pleader is entitled to
 5 relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
 6 While Rule 8 does not require detailed factual allegations, it demands more than "labels
 7 and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft*
 8 *v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). "Factual allegations
 9 must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to
 10 survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a
 11 claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550
 12 U.S. at 570).

13 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to
 14 apply when considering motions to dismiss. First, a district court must accept as true all
 15 well-pleaded factual allegations in the complaint; however, legal conclusions are not
 16 entitled to the assumption of truth. See *id.* at 678. Mere recitals of the elements of a
 17 cause of action, supported only by conclusory statements, do not suffice. See *id.*
 18 Second, a district court must consider whether the factual allegations in the complaint
 19 allege a plausible claim for relief. See *id.* at 679. A claim is facially plausible when the
 20 plaintiff's complaint alleges facts that allow a court to draw a reasonable inference that
 21 the defendant is liable for the alleged misconduct. See *id.* at 678. Where the complaint
 22 does not permit the Court to infer more than the mere possibility of misconduct, the
 23 complaint has "alleged—but it has not show[n]—that the pleader is entitled to relief." *Id.*
 24 at 679 (alteration in original) (internal quotation marks and citation omitted). That is
 25 insufficient. When the claims in a complaint have not crossed the line from conceivable
 26 to plausible, the complaint must be dismissed. See *Twombly*, 550 U.S. at 570.

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1 **V. DISCUSSION**

2 The parties' motions raise overlapping issues that largely turn on whether CLTA
 3 100(1)(a), CLTA 100(2)(a), or CLTA 100.13 cover Plaintiff's loss. The Court accordingly
 4 addresses the overlapping coverage issues together, before addressing Defendant's
 5 Motion as to Plaintiff's extracontractual claims and finally whether it will grant Plaintiff
 6 leave to amend. However, the Court first addresses Plaintiff's motion for leave to
 7 supplement its opposition to the Motion.

8 **A. Motion to Supplement**

9 Plaintiff seeks leave to supplement its opposition to the Motion with additional
 10 authority its counsel has become aware of since filing the opposition, as the same
 11 counsel is apparently working on many similar cases. (ECF No. 64 at 1-2.) Noting that
 12 the Court recently issued the *Wells Fargo* order, Plaintiff's counsel seeks to offer
 13 additional argument effectively seeking reconsideration of the Court's ruling in that order
 14 that CLTA 100(2)(a) does not provide coverage, arguing that her increased familiarity
 15 with pertinent caselaw since February (when she filed the opposition) constitutes good
 16 cause to supplement. (*Id.*) As of the date of entry of this order, Defendant has not yet
 17 responded to Plaintiff's motion for leave to supplement. But the Court nonetheless
 18 denies the motion to supplement because Plaintiff has not shown good cause for the
 19 Court to consider the argument or caselaw presented in the motion.

20 "LR 7-2(g) requires parties to acquire leave of court before filing supplemental
 21 briefs." *Ra Se. Land Co. LLC v. First Am. Title Ins. Co.*, Case No. 2:14-cv-01621-MMD-
 22 NJK, 2016 WL 4591740, at *2 (D. Nev. Sept. 2, 2016). "A court may grant such a
 23 request for good cause." *Id.* Good cause may exist either when the
 24 proffered supplemental authority controls the outcome of the litigation, or when the
 25 proffered supplemental authority is precedential, or particularly persuasive or
 26 helpful. See *Hunt v. Washoe Cty. Sch. Dist.*, Case No. 3:18-cv-00501-LRH-WGC, 2019
 27 WL 4262510, at *3 (D. Nev. Sept. 9, 2019).

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1 Plaintiff does not proffer any precedential authority that post-dates its opposition
 2 in this case in its motion to supplement. (ECF No. 64 at 2-5.) Nor does Plaintiff proffer
 3 any new evidence. Instead, Plaintiff attempts to expand its argument on CLTA 100(2)(a),
 4 primarily relying on a series of out-of-state, state court cases that all predate its
 5 opposition.³ (*Id.*) Plaintiff does not offer any explanation as to why it did not raise any of
 6 these cases in its opposition—though they undisputedly existed at the time—other than
 7 its counsel has become more familiar with title insurance cases since February. (*Id.* at 1-
 8 2.) This does not constitute the requisite good cause. Moreover, none of these cases
 9 bind the Court in any event, much less control the outcome of this litigation.

10 The Court additionally finds it improper that Plaintiff is effectively seeking
 11 reconsideration of the Court's ruling that CLTA 100(2)(a) does not provide coverage in
 12 *Wells Fargo* via a motion styled as a motion for leave to supplement in this case. If
 13 Plaintiff wishes to file a motion for reconsideration in *Wells Fargo*, file it in *Wells Fargo*. In
 14 sum, the Court denies the motion to supplement.

15 **B. Coverage**

16 The Court first addresses the CLTA 100(1)(a) and CLTA 100(2)(a) endorsements
 17 together, and then the CLTA 100.13 endorsement.

18 **1. CLTA 100(1)(a), CLTA 100(2)(a)**

19 As noted, the Court found in *Wells Fargo* that the CLTA 100(1)(a) endorsement
 20 covered the plaintiff's loss, but the CLTA 100(2)(a) endorsement did not. See *Wells*
 21 *Fargo*, ECF No. 52 at 11-19. The Court makes the same findings here for the reasons
 22 provided in that order. See *id.* After all, the allegations, arguments, and pertinent
 23 evidence attached to the FAC in this case are substantially similar to the materials the
 24 Court considered in *Wells Fargo* as to these two endorsements.

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 27 ³Plaintiff does cite repeatedly to *U.S. Home Corp. v. Michael Ballesteros Trust*,
 28 415 P.3d 32 (Nev. 2018) (ECF No. 64) but it cited to that case in its opposition as well
 (ECF No. 55 at 14).

1 Accordingly, Defendant's Motion is denied to the extent it is based on the
2 argument that the CLTA 100(1)(a) endorsement does not cover Plaintiff's loss but
3 granted to the extent it is based on the argument that the CLTA 100(2)(a) endorsement
4 does not cover Plaintiff's loss.

5 **2. CLTA 100.13**

6 Defendant argues the Court should dismiss Plaintiff's claims to the extent based
7 on this endorsement because it covers loss or damage resulting from an aircraft
8 easement by its express terms, alternatively arguing that Plaintiff has not articulated any
9 legal theory in its FAC that would permit the Court to correct any mistake with this
10 endorsement if there is a mistake. (ECF No. 50 at 15-16.) While Plaintiff does not
11 dispute that, as written in the Policy, the CLTA 100.13 endorsement does not cover its
12 loss, Plaintiff argues it would have if the endorsement was written as the parties
13 allegedly mutually agreed it was going to be at the time the Policy issued. (ECF No. 55
14 at 17-20.) Plaintiff further argues it has alleged what amounts to mutual mistake in the
15 FAC, and the Court must accept that allegation as true. (*Id.* at 18.) Plaintiff additionally
16 argues that it did not need to expressly plead a reformation theory in the FAC because
17 reformation is a remedy, not a cause of action. (*Id.* at 20-21.) Plaintiff finally asks for
18 leave to amend if the Court disagrees. (*Id.* at 21-22.) In reply, Defendant argues in
19 pertinent part that the allegation regarding mutual mistake is a legal conclusion that the
20 Court need not accept as true. (ECF No. 56 at 7-8.) The Court agrees with Defendant in
21 pertinent part.

22 As the Court found in the Dismissal Order (ECF No. 35 at 9, 9 n.9), the CLTA
23 100.13 endorsement included in the Policy does not cover Plaintiff's loss by its express
24 terms because it covers a loss by reason of lack of priority of the insured mortgage
25 resulting from an easement for passage of aircraft, and incidental purposes (ECF No.
26 47-1 at 13, 17). And while Plaintiff alleges in the FAC that this was a result of mutual
27 mistake (ECF No. 47 at 18, 29), mutual mistake is a question of contract interpretation,
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1 and “[c]ontract interpretation generally presents a question of law[.]”⁴ *Anderson v.*
 2 *Sanchez*, 373 P.3d 860, 863 (Nev. 2016); see also *id.* at 863-864 (analyzing a question
 3 of mutual mistake as one of contract interpretation). Plaintiff’s allegation that there was a
 4 mutual mistake is accordingly a legal conclusion that the Court is not required to accept
 5 as true at this stage. See *Iqbal*, 556 U.S. at 678 (“the tenet that a court must accept as
 6 true all of the allegations contained in a complaint is inapplicable to legal conclusions.”).
 7 And as a practical matter, it would be logically easier to accept the allegation of mutual
 8 mistake as plausible if Defendant agreed there had been a mutual mistake. But
 9 Defendant does not, making the facial inapplicability of the CLTA 100.13 endorsement in
 10 the Policy its lead argument in its Motion (ECF Nos. 50 at 15-16), and doubling down on
 11 it in reply (ECF No. 56 at 7-8). Thus, there appears to be a genuine dispute as to
 12 whether the parties made a mutual mistake in drafting and agreeing to the CLTA 100.13
 13 endorsement in the Policy. But in any event, at this stage, the Court does not accept as
 14 true Plaintiff’s allegation that there was a mutual mistake.

15 And whether reformation is a cause of action or a remedy, Plaintiff’s FAC lacks
 16 any reference to, or discussion of, the concept. (ECF No. 47.) Without any discussion of
 17 reformation in the FAC, particularly no request for it as part of the relief sought as to the
 18 CLTA 100.13 endorsement, how can the Court find in Plaintiff’s favor that the CLTA
 19 100.13 endorsement covers its loss? The question begs the answer: the Court cannot—
 20 not based on the allegations in the FAC. The Court would first have to reform the
 21 contract in the way that Plaintiff desires, but the FAC gives the Court no avenue to do so.

22 As to the trade usage evidence allegedly pertinent to the interpretation of the
 23 CLTA 100.13 endorsement, none of it speaks to the CLTA 100.13 endorsement in the

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 25 ⁴The Policy does not contain a choice of law provision. (ECF No. 47-1.) The
 26 parties appear to presume the Policy is governed by Nevada law; the Court agrees
 27 because Nevada has the most substantial relationship to the Policy. See *Progressive*
Gulf Ins. Co. v. Faehnrich, 327 P.3d 1061, 1063-64 (Nev. 2014) (“Nevada tends to follow
 28 the Restatement (Second) of Conflict of Laws (1971) in determining choice-of-law
 questions involving contracts, generally, and insurance contracts, in particular.”) (internal
 citations omitted).

1 Policy, because none of it discusses aviation easements. (ECF Nos. 47-6 at 52, 47-9 at
2 2.) But the Court of course acknowledges Plaintiff's argument that the fact the trade
3 usage generally describes the CLTA 100.13 endorsement as covering something like
4 the loss at issue here, and not discussing aviation easements, suggests that there was a
5 mistake in the Policy. (ECF No. 55 at 18.) The Court finds that argument persuasive.
6 Indeed, based on the text of the CLTA 100.13 endorsement, the aviation easement does
7 not seem like it fits.

8 However, the Court cannot simply accept Plaintiff's theory of the case as true at
9 this stage, particularly where Plaintiff's FAC does not ask for reformation of any sort, and
10 Defendant contends that there is no mistake in the Policy. Defendant's Motion is
11 therefore granted to the extent it seeks dismissal of Plaintiff's claims based on the
12 contention that CLTA 100.13 endorsement covers Plaintiff's loss.

13 **C. Extra-Contractual Claims**

14 The Court also incorporates by reference its discussion of the extra-contractual
15 claims in the *Wells Fargo* order because the same analysis applies here as well. See
16 *Wells Fargo*, ECF No. 52 at 21-24.

17 Like in *Wells Fargo*, the parties' arguments regarding Plaintiff's claim for breach of
18 the implied covenant of good faith and fair dealing turn on whether the Court agrees that
19 one of Plaintiff's proffered endorsements covers Plaintiff's loss or not. (ECF Nos. 50 at
20 17-18, 55 at 22-23 (making their arguments).) Because the Court finds that CLTA
21 100(1)(a) covers Plaintiff's loss, Plaintiff's claim for breach of the covenant of good faith
22 and fair dealing may proceed, and Defendant's Motion is accordingly denied to the
23 extent it seeks dismissal of that claim.

24 The parties' arguments regarding Plaintiff's deceptive trade practices claim are
25 also substantially identical to the arguments the Court resolved in the *Wells Fargo* order,
26 and the Court will accordingly resolve them in the same way it did in that case. (ECF
27 Nos. 50 at 18-20, 55 at 23-24 (making their arguments).) See also *Wells Fargo*, ECF No.
28 52 at 21-22. Like in *Wells Fargo*, Defendant does not dispute that Plaintiff's original

1 complaint was timely filed, but notes that the original complaint did not contain a
 2 deceptive trade practices claim and therefore argues that that the deceptive trade
 3 practices claim does not relate back, or alternatively that Plaintiff fails to state a claim.
 4 (ECF No. 50 at 18-19.) For the reasons provided in *Wells Fargo*, the Court disagrees.
 5 See *Wells Fargo*, ECF No. 52 at 21-22. The Court accordingly denies Defendant's
 6 Motion to the extent it seeks dismissal of Plaintiff's deceptive trade practices claim.

7 Finally, the parties' arguments regarding Plaintiff's NRS § 686A.310 claim are
 8 also substantially identical to the arguments the Court resolved in the *Wells Fargo* order,
 9 and the Court will accordingly resolve them in the same way it did in that case. (ECF
 10 Nos. 50 at 20-22, 55 at 24-25 (making their arguments).) See also *Wells Fargo*, ECF No.
 11 52 at 22-24. Like in *Wells Fargo*, there is no dispute here that Defendant formally denied
 12 Plaintiff's claim more than three years before Plaintiff filed its original complaint. (ECF
 13 Nos. 50 at 20, 55 at 24-25 (declining to dispute the dates it filed the original complaint or
 14 received Defendant's claim denial letter).) Thus, for the reasons provided in *Wells Fargo*,
 15 the Court dismisses Plaintiff's NRS § 686A.310 claim as time barred. See *Wells Fargo*,
 16 ECF No. 52 at 22-24. And Plaintiff makes the same arguments to resist this conclusion
 17 that the plaintiff did, and the Court rejected, in *Wells Fargo*. See *id.* (See also ECF No.
 18 55 at 24-25.) The Court accordingly rejects those arguments for the same reasons it did
 19 in *Wells Fargo*. Defendant's Motion is granted to the extent it seeks dismissal of
 20 Plaintiff's NRS § 686A.310 claim.

21 **D. Leave to Amend**

22 Plaintiff seeks leave to amend if the Court dismisses any of its claims. (ECF No.
 23 55 at 25.) Defendant contends that the Court should not grant leave to amend because
 24 Plaintiff has already had an opportunity to amend and any amendment would be futile.
 25 (ECF No. 50 at 22.) These arguments again present the Court with a situation similar to
 26 the situation it faced in *Wells Fargo*, and the Court will resolve these arguments
 27 consistently with the way it resolved them in *Wells Fargo*. See *Wells Fargo*, ECF No. 52
 28 at 24-25.

1 As explained *supra*, Plaintiff may proceed with its first, second, third, and fourth
2 claims to the extent they are based on Defendant's decision to deny coverage despite
3 the fact that the CLTA 100(1)(a) endorsement covers Plaintiff's loss.

4 But for the reasons provided in *Wells Fargo*, the Court denies Plaintiff's request
5 for leave to amend its claims to the extent they are based on the CLTA 100(2)(a)
6 endorsement—and denies Plaintiff's request for leave to amend its NRS § 686A.310
7 claim—as amendment would be futile. See *Wells Fargo*, ECF No. 52 at 24-25.

8 That said, the Court grants Plaintiff leave to amend its FAC to the extent Plaintiff
9 insists the CLTA 100.13 endorsement covers Plaintiff's loss. The Court cannot say that
10 amendment of Plaintiff's FAC to the extent based on this theory would be futile. Indeed,
11 as noted, Plaintiff's mutual mistake theory is plausible given the apparent mismatch
12 between the language of the endorsement and the content of paragraph 11 of Schedule
13 B. And Plaintiff could plausibly add some allegations going to the reformation concept
14 that could enable the Court to find the CLTA 100.13 endorsement covers Plaintiff's loss
15 by the ultimate conclusion of this case. Thus, Plaintiff may amend its FAC to further
16 amend its allegations regarding Plaintiff's contention that the CLTA 100.13 endorsement
17 covers Plaintiff's loss. Plaintiff must file any amended complaint within 30 days.

18 **VI. CONCLUSION**

19 The Court notes that the parties made several arguments and cited to several
20 cases not discussed above. The Court has reviewed these arguments and cases and
21 determines that they do not warrant discussion as they do not affect the outcome of the
22 Motion before the Court.

23 It is therefore ordered that Defendant's motion to dismiss (ECF No. 50) is granted
24 in part, and denied in part, as specified herein.

25 It is further ordered that Plaintiff's motion to supplement (ECF No. 64) is denied.

26 It is further ordered that Plaintiff must file any amended complaint as permitted
27 herein within 30 days. Failure to timely file such an amended complaint may result in in
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1 the Court dismissing Plaintiff's claims to the extent based on the theory that the CLTA
2 100.13 endorsement covers Plaintiff's loss without any further advance notice.

3 DATED THIS 23rd Day of September 2022.

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7 MIRANDA M. DU
8 CHIEF UNITED STATES DISTRICT JUDGE
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